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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/511,191 | 04/27/2005 | Julio Cesar Ruiz Ballesteros | P040411 | 6955 |
| 26574 | 7590 | 09/21/2007 | | |
| SCHIFF HARDIN, LLP PATENT DEPARTMENT 6600 SEARS TOWER CHICAGO, IL 60606-6473 | | | EXAMINER PAIK, SANG YEOP | |
| | | | ART UNIT 3742 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,191

Applicant(s)

RUIZ BALLESTEROS ET AL.

Examiner

Sang Y. Paik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7, 8, 10 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke et al (US 6,078,728) in view of Flashinski et al (US 6,154,607) and Kennedy (US 5,695,692).

O'Rourke shows an evaporator having a base body with an integrated plug, a heating surface to provide heating to an active substance provided on a removable and slidable support. The base body has the U shape with a rear and a front portion which further has the aeration grills with the support fit between the rear and front portions and the lateral walls with protrusions. However, O'Rourke does not shows a PTC heating resistance and the support having two housings that are adapted to in size and shape to two different type of containers of the active substances.

Flashinski shows that it is known in the art to provide an evaporator device with a PTC heating element, and Flashinski further shows a slidable support (30B) with a container being a table (24) having an active substance in a tray (20) with a fragrance permeable membrane (28).

Kennedy shows that it is known in the art to provide a volatile carrying support or case with different housings that is capable of accommodating different and varying sizes of the active substances. A first housing can be the circular shape with another housing formed of a

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triangle wedge shape inside the first housing. Furthermore each wedge section can be different housings in combination with each other to allow different containers to be inserted therein. For example, a semi-circular shape container can be inserted into the semi-circular shape housing section with a wedge shape container inserted into the triangular wedge shape housing. Furthermore, a single wedge shaped container can be inserted therein as shown in Figure 1 or a circular shape can be inserted in the support as shown in Figures 6-8.

In view of Flashinski and Kennedy, it would have been obvious to one ordinary skill in the art to adapt O'Rourke with the PTC heating element, which is known in the art to provide a self-regulating heating, to more uniformly heat the volatile active substances, and further adapt with a carrier having compartments or housings wherein different shapes and sizes of active substances can be provided thereto to allow different volatile substances at different selected regions can be heated.

With respect to claims 10 and 12, the safety mechanism is shown by O'Rourke which shows the teeth established in the front end of lateral walls of the support (see Figures 1 and 3).

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12-17 above, and further in view of Schroeder (US 4,725,712) and Shibahashi et al (US 5,558,700).

O'Rourke in view of Flashinski and Kennedy shows the device claimed except the thermochrome paint on the body.

Schroeder shows a fluorescent screen provided on the body of the evaporator device to indicate the function of the device. Shibahashi shows that it is well known in the art that a

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thermochrome or thermochromic materials provide fluorescent colors which can be used to indicate the operating temperature.

In view of Schroeder and Shibahashi, it would have been obvious to one of ordinary skill in the art to adapt O'Rourke, as modified by Flashinski and Kennedy, with a pattern made of the thermochrome fluorescent paint to visually indicate the functions of the device such as the operated temperature of the device with the varying fluorescent colors.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12-17 above, and further in view of Sprick (US 5,794,803) or Fuchs (US 5,078,288).

O'Rourke in view of Flashinski and Kennedy shows the device claimed except the side surface of the casing or body being deformed to release the locking teeth.

Sprick and Fuchs show a well known locking safety mechanism with the locking teeth engage with the respective complementary locking teeth wherein the engaged teeth are released as the side of a casing or body is press deformed.

In view of Sprick or Fuchs, it would have been obvious to one of ordinary skill in the art to adapt O'Rourke, as modified by Flashinski and Kennedy, with the safety mechanism having the corresponding press release area to ensure safety from inadvertent release of the active substance support.

Response to Arguments

5. Applicant's arguments filed on 7/18/07 have been fully considered but they are not persuasive.

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The applicant argues Flashinski fails to show or suggest the recited two housings and the recited container wherein the container is a tablet and a tray. It is noted that Flashinski is not applied to teach the recited two housing but is applied for the recited PTC heating element and the container being a tablet and a tray.

Flashinski clearly teaches a PTC heater (column 2, lines 11-16), and the recited container being a tablet and a tray is shown in Figure 4 wherein a container being a tablet (24) of an active substance, i.e., containing an active substance, with a fragrance permeable membrane (28) is provided with a tray (20). This container is contained in the housing (30 or 30B). This structure clearly meets the recited PTC heater and the container. The applicant argues that a solid but porous substrate (24) applied by the examiner to teach or meet the recited tablet is not a "tablet." This argument is not deemed persuasive. The applicant's disclosure, a paper or the like with active substances established therein is shown to be a tablet. The solid but porous substrate having an active substance therein shown by the substrate (24) in Flashinski meets such broadly disclosed term "tablet".

With respect to Kennedy, the applicant argues Kennedy shows multiple embodiments each of which discloses multiple housings, and since no single embodiment teaches the claimed support having two housings that is adapted in size and shape to two different types of containers. This argument is not deemed persuasive. As seen and illustrated in the drawing Figures of Kennedy, there can be two different types of active substances where a triangle wedge shaped activate substance or a circular shaped active substance can be provided in a carrier support which has compartments that can accommodate such different sizes and shapes. Furthermore, Figure 8 of Kennedy which is shown to carry a circular shaped active substance has

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the triangle compartment that is capable of carrying and supporting the triangle wedge shaped active substance as shown in Figure 1. The support structures of Kennedy which has the compartments shown to accommodating varying size and shapes of active substance clearly meets the recited support structure. It is also noted that there is no other structural recitation or support in the claims that distinguishes the recited support from that of the Kennedy's. The applicant argues that the examiner's position of interpreting different containers by Kennedy is based on an "obvious to do so" basis. This argument is not deemed persuasive since Kennedy clearly shows the use of different types of containers that are clearly capable of being used in the support member as illustrated in Figures 1 and 8. The different type of containers can be provided in the support members as shown by Kennedy just as the recited evaporator device "can equally receive either type of container of the active substance."

The applicant also argues O'Rourke fails to show the base body with a U shape. The applicant argues that "U-shaped" generally means a curved bottom portion, straight side portions and a straight top portion. Figure 1 of O'Rourke shows the base body (12) having a curved portion and straight portions which meets the U-shape. It is also noted there is no other recited structural support to distinguish the recited U-shape from that of the U-shaped portion of O'Rourke.

With respect to Schroeder, Shibahashi, Sprick, and Fuchs, the applicant's arguments are not deemed persuasive since they are not applied to teach the recited two housings.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

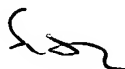
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (6:30-3:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sang Y Paik
Primary Examiner
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